

Decision 05-05-032 May 26, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Fremont for an Order authorizing construction of two grade separated crossings at Paseo Padre Parkway (roadway underpass) and Washington Boulevard (roadway overpass) of the Union Pacific Railroad Company's realigned Warm Springs Subdivision Mainline and the future BART Warm Springs Extension, and for elimination of four active and two inactive at-grade crossings in the City of Fremont, County of Alameda.
[PUC No. 001DA-32.10-B and 001DA-32.80-A]

Application 04-07-017
(Filed July 6, 2004)

O P I N I O N

I. Summary

This opinion authorizes the City of Fremont (Fremont) to construct two grade separated crossings (grade separated crossings) and to eliminate six at-grade crossings. The six at-grade crossings¹ will be eliminated as a result of the two new separated crossings. A protest to this application was withdrawn, and therefore the application is unopposed.

II. Background

On July 6, 2004, Fremont filed Application (A.) 04-07-017 requesting authorization to construct the grade separated crossings at Paseo Padre Parkway

¹ The six at-grade crossings include four active crossings and two inactive crossings.

and Washington Boulevard under Pub. Util. Code §§ 1201-1205. The grade separated crossing at Washington Boulevard will eliminate three active and one inactive at-grade crossings; while the grade separated crossing at Paseo Padre Parkway will eliminate one active and one inactive at-grade crossing. The grade separated crossings are located along the tracks of the Union Pacific Railroad Company's (Union Pacific) Warm Springs Subdivision Mainline tracks in Fremont.² Fremont explains that Union Pacific's Milpitas Subdivision³ through the project area has been sold to the Santa Clara Valley Transportation Authority for a Bay Area Rapid Transit (BART) extension from Warm Springs in Fremont to San Jose. Therefore, the eliminated at-grade crossings for this track are not active.

Fremont states that Union Pacific's Warm Springs Subdivision line will be relocated in order to minimize the impact of the grade separated crossing projects on the residential and business areas at Paseo Padre Parkway and Washington Boulevard. Fremont notes that a BART extension structure crossing over the Paseo Padre Parkway grade separated crossing is also proposed to be constructed as part of this project. Fremont contends that the proposed grade separated projects will allow the BART extension to be "at grade,"⁴ saving BART significant construction costs.

² See attachment for a detailed vicinity map of the grade separated crossings. Additional drawings are attached to the Application.

³ The Milpitas Subdivision and the Warm Springs Subdivision refer to different railroad tracks in the project area.

⁴ Thus, it will not be necessary for the BART extension to be constructed aurally.

Fremont further states that as a result of the construction of the grade separated crossings, at-grade crossings will be eliminated, relieving Paseo Padre Parkway and Washington Boulevard of traffic disruption by rail movements. This will improve the safety of pedestrians, bicyclists, and motorists who are presently crossing the heavily used Union Pacific mainline tracks.

Fremont explains that during construction of the Washington Boulevard separation, the existing street will be closed at the tracks, and vehicular traffic will be detoured to a temporary four-lane roadway located north of the existing roadway. Traffic delineators will be placed between the opposing lanes of traffic at the temporary at-grade crossing of the Warm Springs Subdivision Mainline to prevent vehicular traffic from driving around the crossing gates. Union Pacific will install temporary crossing gates and cantilevers until the rail traffic is switched to the relocated Warm Springs Subdivision Mainline. Prior to the switchover of rail traffic, Union Pacific will install temporary crossing gates and cantilevers at the relocated Warm Springs Subdivision line crossing of the detour road and remove the crossing gates and cantilevers at the existing crossing of the detour road.

During construction of the Paseo Padre Parkway grade separated crossing, the existing street will be closed at the tracks and vehicular traffic will be detoured to a temporary two-lane road north of the existing roadway. Traffic delineators will be placed at the temporary at-grade crossings of the Warm Springs Subdivision Mainline until the rail traffic is switched to the relocated mainline. Prior to the switchover of rail traffic, Union Pacific will install temporary crossing gates at the relocated Warm Springs Subdivision line crossing of the detour road and remove the crossing gates at the existing crossing of the detour road.

After the two grade separated crossings are open to traffic, the temporary at-grade crossing protections for the detour roads will be removed.

Fremont also explains that the Main Street (001DA-32.70)⁵ and High Street (001DA-32.65)⁶ at-grade crossings of the Warm Springs Subdivision line will be removed and permanently closed prior to opening the temporary detour at Washington Boulevard to traffic. Furthermore, once rail traffic is switched to the relocated Warm Springs Subdivision Mainline, Main Street and High Street will be reopened and connected to provide the same access as is presently available.

Fremont states it is the lead agency for the grade separated crossings under the California Environmental Quality Act of 1970 (CEQA), as amended.⁷ Fremont contends that the grade separated crossing projects are exempt from CEQA under Pub. Resources Code Section 21080.13, Title 14 of the California Code of Regulations Section 15282(h).⁸

Fremont states that financing for the separation crossings will be arranged using funds from Fremont and a contribution by Union Pacific.

On July 28, 2004, Union Pacific protested the Application stating it objected to any cost allocation requiring Union Pacific to pay for the cost of a structure that is not based on the existing alignment of the Warm Springs Subdivision Mainline. Union Pacific also stated it had not entered into any agreements for

⁵ Designates at-grade crossing identification number.

⁶ *Id.*

⁷ Public Resources Code Section 21000, et seq.

⁸ Attached to the Application is a Notice of Exemption from CEQA filed with the county of Alameda on March 8, 2000.

the separation crossings or realignment of the Warm Springs Subdivision, and that Fremont did not have the necessary ownership rights to construct the grade separated crossings.

Following a series of meetings between Fremont and Union Pacific, Fremont sent a letter to the assigned Administrative Law Judge (ALJ)⁹ stating that it had resolved all issues with Union Pacific relating to the Application.¹⁰ On February 28, 2005, Union Pacific withdrew its protest of the Application.

III. Discussion

The Commission is a responsible agency for this project under CEQA.¹¹ CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project.¹² The specific activities that must be conducted by a responsible agency are contained in CEQA Guideline Section 15096.

The Commission's Consumer Protection and Safety Division, Rail Crossings Engineering (CPSD-RCE) staff have reviewed the lead agency's Notice of Exemption for the grade separated crossings and we find that it is adequate

⁹ Letter from Fremont to ALJ Bruce DeBerry dated February 16, 2005.

¹⁰ Attached to Fremont's letter is an October 12, 2004 letter from Fremont to Union Pacific outlining a construction and maintenance agreement between Fremont and Union Pacific. Also attached is an October 25, 2004 letter from Union Pacific to Fremont stating additional points of agreement regarding the separation crossings.

¹¹ *See*, Pub. Resources Code Section 21000 et. seq.

¹² *See*, CEQA Guideline Section 15059(b).

for our decision-making purposes. We also find that the grade separated crossings are statutorily exempt from the requirements of CEQA pursuant to Public Resources Code Section 21080.13 and CEQA Guideline Section 15282(h).¹³

The proposed grade separated crossings have been reviewed and inspected by the Commission's Consumer Protection and Safety Division (CPSD), Rail Crossings Engineering Section staff. After reviewing the need for, and safety of, the proposed crossings, the staff recommends that the requested authority sought by Fremont be granted for a period of three years.

The Application meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which relates to the construction of a public highway across a railroad.

IV. Categorization and Need for Hearings

In Resolution 176-3137, dated August 19, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. A protest to the Application was withdrawn, and no other protests were received. Given this status a public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution 176-3137.

V. Comments on Draft Decision

Since this proceeding is uncontested and we grant the relief requested, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

¹³ Grade separations that eliminate an existing at-grade crossing are exempt.

VI. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. Fremont requests authority to construct and maintain two grade separated crossings, one at Paseo Padre Parkway, and one at Washington Boulevard, at the tracks of Union Pacific's Warm Springs Subdivision Mainline.

2. A Union Pacific protest to Fremont's Application was withdrawn, and therefore there are no protests to the Application.

3. Public convenience, safety, and necessity require the construction of the grade separated crossings.

4. The grade separation crossings will allow Fremont to remove four active at-grade crossings, and two inactive at-grade crossings.

5. Replacement of the four active at-grade crossings will relieve Paseo Padre Parkway and Washington Boulevard of disruptions by rail movements.

6. Construction of the grade separated crossings will permit the BART line to be aerial, saving BART significant construction costs.

7. Fremont is the lead agency for the grade separated crossings under CEQA.

8. The Commission is a responsible agency under CEQA for these projects, and has reviewed and considered Fremont's environmental documentation upon which Fremont relied in adopting the mitigation measures for the grade separated crossings.

9. Safety, transportation and noise are within the scope of the Commission's permitting process.

10. Construction of the grade separated crossings will require Fremont to build temporary detours across the Union Pacific mainline protected by traffic delineators and crossing gates.

11. The temporary detours and crossing gates will be removed after the grades separated crossings are opened to traffic.

Conclusions of Law

1. The Application is uncontested and a public hearing is not necessary.
2. Fremont has met the requirements of Pub. Util. Code §§ 2001-1205.
3. Fremont's Application meets the filing requirements of the Commission's Rules of Practice and Procedure.
4. The grade separated crossing projects are exempt from the requirements of CEQA pursuant to Public Resources Code Section 21080.13 and CEQA Guideline Section 15282(h).
5. The Application should be granted.

O R D E R

IT IS ORDERED that:

1. The City of Fremont (Fremont) is authorized to construct and maintain two grade separated crossings at Padre Paseo Parkway and Washington Boulevard (grade separated crossings) at the tracks of Union Pacific Railroad Company's (Union Pacific) Warm Springs Subdivision Mainline in Fremont.
2. Construction and maintenance costs shall be borne in accordance with an agreement that has been entered into between Fremont and Union Pacific. A copy of the agreement shall be filed by Fremont with the Consumer Protection and Safety Division (CPSD) prior to construction. Should the parties fail to

agree, the Commission will apportion the costs of construction and maintenance by further order.

3. Prior to construction, Fremont shall file with CPSD- Rail Crossings Engineering Section final construction plans.

4. Fremont shall inform CPSD- Rail Crossings Engineering Section in writing within 30 days of the date of completion of these grade separated crossings.

5. This authorization shall expire if not exercised within three years unless time is extended or if Fremont fails to comply with the above conditions.

6. Application 04-07-017 is closed.

This order is effective today.

Dated May 26, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners